

FILED
JAMES BONINI
CLERK

2012 SEP -6 AM 11:06

U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

THOMAS YAKUBIK,

Plaintiff,

vs.

E. I. DUPONT DE NEMOURS AND
COMPANY,

Defendant.

CIVIL ACTION NO.

2:12 cv 815

JUDGE

JUDGE GARCIA

~~MAGISTRATE JUDGE DEANERS~~

NOTICE OF REMOVAL

Defendant E. I. du Pont de Nemours and Company ("DuPont") hereby respectfully removes this action from the Court of Common Pleas of Washington County, Ohio, to the United States District Court for the Southern District of Ohio. The grounds for removal are as follows:

1. On or about August 28, 2012, Plaintiff Thomas Yakubik ("Plaintiff") filed this action in the Washington County, Ohio Court of Common Pleas, entitled *Thomas Yakubik v. E. I. du Pont de Nemours and Company*, Case No. 12OT296. Plaintiff has asserted claims against DuPont for "negligence, concealment and fraud," negligence per se, abnormally dangerous or ultrahazardous activity, past and continuing trespass and battery, all allegedly relating to and arising out of the operation of DuPont's Washington Works plant ("Washington Works"), a manufacturing facility located in Wood County, West Virginia. Plaintiff alleges that DuPont, *inter alia*, has "negligently, recklessly, knowingly, carelessly, wrongfully and/or intentionally allowed, caused, and/or

otherwise permitted and is continuing to so allow, cause and otherwise permit releases of" certain chemical substances into Plaintiff's drinking water. Plaintiff seeks to recover both compensatory and punitive damages.

2. DuPont first received a copy of the summons and complaint in this action on or about August 31, 2012.

3. Pursuant to 28 U.S.C. § 1446(a), true and accurate copies of the Summons and Complaint that were received by DuPont are collectively attached hereto as Exhibit A.

4. The Washington County, Ohio Court of Common Pleas, the court in which this action was originally filed, is located within the jurisdiction of the United States District Court for the Southern District of Ohio. Venue is therefore proper in this district under 28 U.S.C. § 1441(a) because this district and division embrace the place in which the removed action has been pending.

5. Upon the filing of this Notice of Removal, pursuant to 28 U.S.C. § 1446(d), DuPont will promptly file a copy of this Notice of Removal with the Court of Common Pleas of Washington County, Ohio.

6. This Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332 because (1) there is complete diversity of citizenship between Plaintiff and DuPont; and (2) on the face of the complaint, it is clear that the matter in controversy exceeds \$75,000, exclusive of interest and costs.

7. Although Plaintiff's Complaint does not assert a specific prayer for compensatory damages, a reasonable interpretation of the pleadings is that the matter in controversy between Plaintiff and DuPont, exclusive of interest and costs, exceeds

the sum or value of Seventy-Five Thousand and No/100 (\$75,000.00) Dollars, of which the District Courts of the United States have original jurisdiction pursuant to 28 U.S.C. § 1332.

8. On information and belief, and as evidenced on the face of the Complaint, Plaintiff is a citizen and resident of Washington County, Ohio.

9. For purposes of diversity jurisdiction under 28 U.S.C. § 1332(a)(1), a corporation is deemed to be a citizen of its state of incorporation and of the state where it maintains its principal place of business. See 28 U.S.C. § 1332(c)(1). DuPont is a Delaware corporation with its principal place of business in Wilmington, Delaware, where it maintains its corporate offices.

10. As noted above, it is clear from the allegations of Plaintiff's Complaint that he seeks compensatory damages in excess of \$75,000. In particular, Plaintiff claims, among other things, that his alleged exposure to substances purportedly released by DuPont has caused him to contract chromophobe renal cell carcinoma and necessitated the removal of his kidney. Moreover, Plaintiff's request for punitive damages may also be included in determining the jurisdictional amount. See *Klepper v. First Am. Bank*, 916 F.2d 337, 340 (6th Cir. 1990). Thus, when Plaintiff's request for punitive damages is combined with his request for compensatory damages, the amount in controversy far exceeds the \$75,000 jurisdictional requirement.

For the foregoing reasons, and pursuant to 28 U.S.C. § 1446, Defendant DuPont hereby removes the above-referenced case from the Court of Common Pleas of Washington County, Ohio to the United District Court for the Southern District of Ohio. If any question arises as to the propriety of the removal of this action, DuPont

respectfully requests the opportunity to fully brief the legal issues through supporting memoranda, and to be heard in oral argument, in support of its position that the case is removable based upon diversity of citizenship.

Respectfully submitted,

Damond R. Mace (By Aaron T. Brogdon, per authority)

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Attorneys for Defendant E.I. du Pont de
Nemours and Company

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing notice of removal was served this 6th day of September, 2012, via U.S. First Class Mail, postage prepaid, on the following:

Gregory H. Collins
David G. Utley
Davis & Young
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Akron, Ohio 44308

Attorneys for Plaintiff

A handwritten signature in blue ink, appearing to be 'E.I. du Pont', is written over a horizontal line.

One of the Attorneys for Defendant E.I.
du Pont de Nemours and Company